

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v. CRIMINAL NO. 05-8 ERIE

MICHAEL KOSTENIUK

CHANGE OF PLEA

Proceedings held before the HONORABLE  
SEAN J. McLAUGHLIN, U.S. District Judge,  
in Courtroom C, U.S. Courthouse, Erie,  
Pennsylvania, on Friday, March 10, 2006.

APPEARANCES:

CHRISTIAN A. TRABOLD, Assistant United States  
Attorney, appearing on behalf of the Government.

THOMAS W. PATTON, Assistant Federal Public

Ronald J. Bench, RMR - Official Court Reporter

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1 PROCEEDINGS

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3 (Whereupon, the Change of Plea began at 10:00 a.m.,  
4 on Friday, March 10, 2006, in Courtroom C.)

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6 THE COURT: Mr. Kosteniuk, I'm informed that you  
7 wish to change the plea you previously entered at Counts One  
8 and Two of Indictment No. 05-8 Erie to a plea of guilty, is  
9 that correct, sir?

10 THE DEFENDANT: That's correct.

11 THE COURT: Before accepting your guilty plea, there  
12 are a number of questions that I will ask you to make certain  
13 that it is a valid plea. If you do not understand any

14 question, please tell me, and I will give you the opportunity

15 to consult with Mr. Patton. I give you these instructions

16 because it is essential to a valid plea that you understand

17 every question before you answer it. Would you please

18 administer the oath.

19 THE CLERK: Please raise your right hand.

20 (Whereupon, the Defendant, MICHAEL KOSTENIUK, was

21 sworn.)

22 THE COURT: Do you understand that now that you have

23 been sworn, your answers to my questions are subject to the

24 penalties of perjury or of making a false statement if you do

25 not answer truthfully?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: Would you please tell me your full name?

3 THE DEFENDANT: Michael Gregory Kosteniuk.

4 THE COURT: How old are you?

5 THE DEFENDANT: Thirty-nine.

6 THE COURT: How far did you go in school?

7 THE DEFENDANT: College graduate.

8 THE COURT: And you can communicate in English?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: That has been your experience, Mr.

11 Patton?

12 MR. PATTON: Yes, sir.

13 THE COURT: Have you taken any drugs or medication  
14 or have you drunk any alcoholic beverages in the past 24 hours?

15 THE DEFENDANT: No, sir.

16 THE COURT: Are you now or have you recently been  
17 under the care of a physician or a psychiatrist?

18 THE DEFENDANT: No, sir.

19 THE COURT: Are you now or have you recently been  
20 hospitalized or treated for narcotic addiction?

21 THE DEFENDANT: No, sir.

22 THE COURT: Do you understand what's happening here  
23 today?

24 THE DEFENDANT: Yes.

25 THE COURT: Does either counsel have any doubt about

1 the competence of this defendant to plead guilty at this time

2 to the charge contained in the Indictment; Mr. Trabold?

3 MR. TRABOLD: No, your Honor.

4 THE COURT: Mr. Patton?

5 MR. PATTON: No, sir.

6 THE COURT: I find this defendant is competent to  
7 plead. Do you have a lawyer with you here today?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: What's his name?

10 THE DEFENDANT: Thomas Patton.

11 THE COURT: Have you had a sufficient opportunity to  
12 discuss your case with him?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Are you happy with the work that he's  
15 done for you?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you understand that if you continue  
18 to plead not guilty and do not change your plea, you would have  
19 the right to be assisted by an attorney at the trial of the  
20 charge against you?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand that if you did not  
23 enter a guilty plea and that if you qualified financially, you

24 would be entitled to be assisted by an attorney at no cost to  
25 you at every phase of the processing of these charges against

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1 you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand that if you did not  
4 plead guilty and if there were a trial, under the Constitution  
5 and laws of the United States, you would be entitled to a  
6 speedy trial by a judge and jury on the charge contained in the  
7 Indictment?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand that if there were a  
10 trial, you would be presumed to be innocent at the trial of the  
11 charge against you?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand that if there were a  
14 trial, the government would be required to prove your guilt by  
15 competent evidence and beyond a reasonable doubt before you  
16 could be found to be guilty?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand that if there were a  
19 trial, you would not have to prove that you were innocent?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand that if there were a  
22 trial, the jury would have to be unanimous in order to find you  
23 guilty of the charge?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand that if there were a

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1 trial, you would have the right to participate in the selection  
2 of the jury; you would have the right to strike or eliminate  
3 any prospective juror if it was demonstrated that the juror  
4 would be unable to render a fair and impartial verdict; and  
5 that you would have the right to strike or eliminate ten jurors  
6 from the jury and one alternate, without giving any reason at  
7 all for so doing?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand that if there were a  
10 trial, the witnesses for the government would have to come to  
11 court and testify in your presence?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand that if there were a  
14 trial, your counsel could cross-examine the witnesses for the  
15 government, object to evidence offered by the government and  
16 then offer evidence on your behalf?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand that if there were a  
19 trial, the government would have to pay witness fees to  
20 witnesses which you wished to call on your behalf if you  
21 qualified as being financially unable to pay such witness fees?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand that if there were a  
24 trial, you would have the right to testify if you chose to?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you understand that if there were a  
2 trial, you would have the right not to testify and that no  
3 inference or suggestion of guilt could be drawn from the fact  
4 that you did not testify?

5 THE DEFENDANT: Yes, sir.



6 THE COURT: If you plead guilty and I accept your  
7 plea, do you understand that you will waive your right to a  
8 trial and the other rights I have just mentioned to you, that  
9 there will be no trial, and that I will enter a judgment of  
10 guilt and sentence you on the basis of your guilty plea after  
11 considering a presentence report?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: If you plead guilty, do you understand  
14 that you will also have to waive your right not to incriminate  
15 yourself because I will ask you questions about what you did in  
16 order to satisfy myself that you are guilty as charged and that  
17 you will have to acknowledge your guilt?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now that I mentioned your rights to you,  
20 do you still wish to plead guilty?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you have a copy of the Indictment  
23 naming you and have you discussed with your counsel the charge  
24 in the Indictment to which you intend to plead guilty?

25 THE DEFENDANT: Yes.

1 THE COURT: Which counts is he pleading to?

2 MR. PATTON: Counts One and Two, your Honor.

3 THE COURT: Do you understand that you are charged

4 in Count One as follows: "From in and around August, 2004, to

5 in and around November of 2004, in the Western District of

6 Pennsylvania, the defendant, Michael Kosteniuk, did knowingly

7 receive any visual depictions of a minor, that had been shipped

8 and transported in interstate commerce, specifically, by

9 computer, the production of which involved the use of a minor

10 engaging in sexually explicit conduct, and which depict a minor

11 engaging in sexually explicit conduct, as those terms are

12 defined in Title 18, United States Code, Section 2256.

13 In violation of Title 18, United States Code,

14 Section 2252(a)(2)." Do you understand that charge?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand that as to Count One

17 in order for the crime of receipt of material depicting the

18 sexual exploitation of a minor, in violation of 18 U.S.C.

19 Section 2252(a)(2), to be established, the government must

20 prove all of the following essential elements beyond a

21 reasonable doubt.

22 One. That the defendant knowingly received a visual  
23 depiction of a minor in interstate or foreign commerce, by any  
24 means, including by computer or through the United States mail.

25 Two. That the production of such visual depiction

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1 involved the use of a minor engaging in sexually explicit  
2 conduct, as those terms are defined in Title 18, United States  
3 Code, Section 2256, and that the defendant knew the visual  
4 depiction was of a minor.

5 Three. That the visual depiction is of such  
6 conduct. Title 18, United States Code, Section 2251(a)(2)(B).

7 Do you understand the elements as to Count One?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand that you are charged  
10 in Count Two as follows: "From in and around August of 2004,  
11 to in and around November of 2004, in the Western District of  
12 Pennsylvania, the defendant, Michael Kosteniuk, did knowingly  
13 possess visual depictions, namely, visual images in individual  
14 computer graphics files, the production of which involved the

15 use of minors engaging in sexually explicit conduct, as those  
16 terms are defined in Title 18, United States Code, Section  
17 2256, and which depict minors engaging in sexually explicit  
18 conduct, all of which had been shipped and transported in  
19 interstate and foreign commerce, by means of a computer.

20 In violation of Title 18, United States Code,  
21 Section 2252(a)(4)(B)." Do you understand that charge?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand that in order for the  
24 crime of possession of material depicting the sexual  
25 exploitation of a minor, in violation of Title 18, United

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1 States Code, Section 2252(a)(4)(B) to be established, the  
2 government must prove all of the following essential elements  
3 beyond a reasonable doubt.

4 One. That the defendant knowingly possessed one or  
5 more items, which contained a visual depiction of a minor  
6 engaging in sexually explicit conduct.

7 Two. That the item which contained the visual  
8 depiction had been mailed, transported or shipped in interstate

9 commerce, or had been produced using materials which had been

10 mailed or transported or shipped in interstate commerce.

11 Three. That the production of the visual depiction

12 involved the use of a minor engaging in sexually explicit

13 conduct, as those terms are defined in Title 18, United States

14 Code, Section 2256. Title 18, United States Code, Section

15 2252(a)(4)(B). Do you understand the elements as to that

16 count?

17 THE DEFENDANT: Yes, sir.

18 MR. PATTON: With regard to the penalties, Mr.

19 Kosteniuk does not have any prior conviction that would trigger

20 the enhanced penalties.

21 THE COURT: Are the penalties different?

22 MR. PATTON: They are different for Counts One and

23 Two.

24 THE COURT: All right. Do you understand that the

25 maximum penalty at Count One is as follows: Imprisonment of

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1 not less than five years and not more than 20 years.

2 Recognizing what counsel said, but if the defendant has a prior

3 conviction under Title 18, United States Code, Chapter 71,  
4 Chapter 109A, et seq., or under the laws of any state relating  
5 to aggravated sexual abuse, sexual abuse, or abusive sexual  
6 conduct involving a minor or ward, or the production,  
7 possession, receipt, mailing, sale, distribution, shipment, or  
8 transportation of child pornography, such person shall be fined  
9 under this title and imprisoned not less than 15 years nor more  
10 than 40 years.

11 A fine of \$250,000.

12 A term of supervised release of up to life.

13 Any or all of the above.

14 As well as a mandatory special assessment of \$100.

15 And restitution may be required in this case as to  
16 Counts One and Two, together with any authorized penalty.

17 Do you understand the maximum penalty insofar as  
18 Count One is concerned?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: As to Count Two, do you understand the  
21 maximum penalty would be as follows: Imprisonment of not more  
22 than 10 years; but if such person has a prior conviction under  
23 Title 18, United States Code, et seq., or under the laws of any  
24 state relating to aggravated sexual abuse, sexual abuse, or

25 abusive sexual conduct involving a minor or ward, or the

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1 production, possession, receipt, making, sale, distribution,  
2 shipment or transportation of child pornography, such person  
3 shall be fined under this title and imprisoned not less than 10  
4 years nor more than 20 years.

5 A fine of \$250,000.

6 A term of supervised release of up to life.

7 And any or all of the above.

8 A mandatory special assessment of \$100.

9 As well as restitution, together with any authorized  
10 penalty.

11 Do you understand the maximum penalty as to Count  
12 Two?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Has anybody made any threat to you or to  
15 anyone else that has forced you in any way to plead guilty  
16 today?

17 THE DEFENDANT: No, sir.

18 THE COURT: Has there been a plea agreement?

19 MR. TRABOLD: No, your Honor.

20 THE COURT: All right. Do you understand that the  
21 offense to which you are pleading guilty today is a felony  
22 offense; that if your plea is accepted, you will be adjudged  
23 guilty of that offense and that such adjudication may deprive  
24 you of valuable civil rights, such as the right to vote, hold  
25 public office, serve on a jury and the right to possess any

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1 kind of firearm; do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Under the Sentencing Reform Act of 1984,  
4 the United States Sentencing Commission has issued guidelines  
5 for judges to follow in determining sentences in criminal cases  
6 for offenses occurring after November 1, 1987. Have you and  
7 Mr. Patton talked about how the Sentencing Guidelines may apply  
8 to your case and the fact that the guidelines are now advisory  
9 by virtue of Supreme Court decisions?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And do you understand that the court  
12 will not be able to determine the advisory guideline sentence



13 for your case until after the presentence report has been  
14 completed and you and the government have had an opportunity to  
15 challenge those facts reported by the probation officer?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And do you understand that after it has  
18 been determined what guideline sentence applies to a case, the  
19 judge has the authority in some circumstances to impose a  
20 sentence that is more severe or less severe than that called  
21 for by those guidelines?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And do you understand that parole has  
24 been abolished and that if you are sentenced to a term of  
25 imprisonment, you will not be released on parole?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand that if the sentence  
3 is more severe than you expected, you will still be bound by  
4 your guilty plea and that you will have no right to withdraw  
5 it?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Except for your discussions with Mr.

8 Patton about the Sentencing Guidelines, has anybody made any

9 prediction or promise to you about what your sentence will be?

10 THE DEFENDANT: No, sir.

11 THE COURT: Has anything I have said here today

12 suggested to you what your actual sentence will be?

13 THE DEFENDANT: No, sir.

14 THE COURT: Have you been instructed by your

15 counsel, by government counsel, or by anybody else to respond

16 untruthfully to any question about a promised sentence?

17 THE DEFENDANT: No, sir.

18 THE COURT: Did you, as charged in Counts One and

19 Two, and as previously read to you by me commit the offenses as

20 charged?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Mr. Trabold, what would be the

23 government's proof in the event this case proceeded to trial?

24 MR. TRABOLD: Your Honor, on November 23rd of 2004,

25 the manager of operations in the Human Resource Department for

1 Caron Industries, which is located out in the Girard/Lake City  
2 area, called the FBI to report that they believed an employee  
3 of theirs, Michael Kosteniuk, was in possession of child  
4 pornography on his work computer. With that, Special Agent  
5 Gerry Clark went to the business and obtained from them Mr.  
6 Kosteniuk's work computer.

7 And subsequent to obtaining that computer,  
8 Mr. Kosteniuk was interviewed on November 24th of 2004 by  
9 Special Agent Clark and myself at the U.S. Attorney's Office.  
10 During that course of that interview, Mr. Kosteniuk confessed  
11 that he had been viewing and receiving child pornography on his  
12 work computer. And estimated that his work computer would  
13 contain hundreds of images of child pornography. He also  
14 indicated that his interest in the material had been escalating  
15 over time, especially in the two months previous to the  
16 interview.

17 With that, a forensic computer examination was  
18 conducted by the FBI, which revealed multiple images of child  
19 pornography on Mr. Kosteniuk's work computer. Specifically,  
20 more than 10 images of child pornography. And further revealed  
21 that Mr. Kosteniuk had been accessing the Internet on his work

22 computer on a fairly consistent basis, as evidenced by the

23 information on the hard drive.

24 That would be the nature of the government's proof.

25 THE COURT: You just heard what Mr. Trabold said by

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1 way of a summary, do you agree with what he said?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you still wish to plead guilty?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Is it your advice he do so, Mr. Patton?

6 MR. PATTON: Yes, sir.

7 THE COURT: Mr. Kosteniuk, because you acknowledge

8 that you are in fact guilty as charged in Counts One and Two

9 and because you know about your right to a trial, and because

10 you are voluntarily pleading guilty, I will accept your guilty

11 plea and enter a judgment to your plea to Counts One and Two of

12 Indictment Number 05-8 Erie.

13 Therefore, it is the finding of the court in the

14 case of United States versus Michael Kosteniuk that the

15 defendant is fully competent and capable of entering an

16 informed plea, and that his plea of guilty is a knowing and  
17 voluntary plea supported by an independent basis in fact  
18 containing each of the essential elements and, therefore, the  
19 plea is accepted and the defendant is now adjudged guilty of  
20 the counts in the Indictment. Would you please have counsel  
21 and the defendant sign the change of plea.

22 (Whereupon, the Change of Plea is executed by the  
23 Defendant and Defense Counsel.)

24 THE COURT: A presentence report will be prepared,  
25 Mr. Kosteniuk, by the probation office. It is in your best

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1 interest to cooperate with the probation officer in furnishing  
2 information for that report because the report will be  
3 important in my decision about what your sentence will be. You  
4 and your counsel have the right and you'll have an opportunity  
5 to examine that report before sentencing.

6 Disposition of sentencing in this case is set for  
7 June 14, 2006, at 10 a.m., in this courtroom.

8 Mr. Trabold, I'm informed that in advance of  
9 sentencing it's not your intention to seek any other bond

10 conditions, is that correct?

11 MR. TRABOLD: That's correct. The bond conditions

12 as set I believe are sufficient, in that they prohibit Mr.

13 Kostenink contact with minors and also limits his Internet

14 access.

15 THE COURT: Good, then we're done.

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17 (Whereupon, at 10:19 a.m., the Change of Plea

18 proceedings were concluded.)

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1 CERTIFICATE

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5 I, Ronald J. Bench, certify that the foregoing is a  
6 correct transcript from the record of proceedings in the  
7 above-entitled matter.

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13 Ronald J. Bench

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